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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/966,027

09/28/2001

Paul Nielsen

9381.00

4672

26889

7590

06/01/2007

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EXAMINER

APPLE, KIRSTEN SACHWITZ

ART UNIT

PAPER NUMBER

3693

MAIL DATE

DELIVERY MODE

06/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/966,027

Applicant(s)

NIELSEN, PAUL

Examiner

Kirsten S. Apple

Art Unit

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5, 12, 16 and 22-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed. 31-41
- 6) ☒ Claim(s) 1, 4, 5, 12, 16 and 22-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Election/Restrictions

Applicant's election without traverse of Claim 31-32 in the reply filed on 2/8/07 is acknowledged. In addition applicant as added claims 33-41.

Claim Rejections - 35 USC § 103

The Examiner has read and reviewed all of the information provided by the Applicant. The examiner rejects as final claims 31-41 under 35 USC 103.

The Applicant attention is re-drawn to the following:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Estes (U.S. Patent 6,508,398) in view of Mishkin (book "The Economics of Money, banking, and financial markets" page 105-109)

Claims 31:

Method of operating an ATM comprising:

- a) charging customers for services rendered by the ATM (*the examiner claims official notice that ATMs charge fees*)
- b) predicting a time when usage of the ATM by customer will increase (*see Estes, column 1, line 46 "monitor"*)

Although Estes does not have “increasing chages at ATM during said times”, Mishkin claims “supply and demand curve.” The concept of a Supply and Demand curve is so well know the examiner considering using Official Notice. The examiner acknowledges this particular reference is referring to interest rate but clearly it applies to any item and certainly a commodity like ATM fees. It is a very well know concept in Economics and Marketing that the higher the demand (in this case more usage of ATM) the higher a price one can charge. This concept has been used for centuries – charge more for phone calls at peak time or airline tickets or whatever is in demand. Applying this to ATM charges is clearly obvious.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to add “supply and demand curve” as taught in Mishkin to Estes.

It is clear that one would be motivated to capture the highest possible revenue.

Claims 32:

Time coincides with public events occurring near the ATM

The examiner argues Office Notice that it is well know to one of ordinary skill in the art at the time of the invention that a public event will mean more people and more people will mean more potential ATM users.

Claims 33 & 36 & 37 & 38 & 39 & 40 & 41:

ATM send performance data to a server for every transaction including type and time of occurrence. (*see Estes, column 1, line 46 “monitor” & column 2, line 25-58, “monitor .. the transactions”*)

Claims 34:

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ATM responds to commands for altering operation of ATM (see *Estes, Figure 1 item 28*)

Claims 35:

A) transmitting performance data (see *Estes, column 2, line 25-58*)

B) Analyzing the data (see *Estes, column 2, line 25-58*)

Examiner Comments

At the end of the day this case is about applying basic 101 marketing and economic principals to an ATM transaction. Any freshman in college would understand and apply these basic principals. Nothing novel is happening with in the ATM (hence the *Estes*) and nothing novel is happen with the pricing (hence the *Mishkin*). Either the applicant needs to significant change the claims toward a part of this invention that is novel or I would recommend abandoning this case altogether.

Response to Arguments

Applicant's arguments filed 11/13/06 have been fully considered but they are not persuasive.

In particular, and respect to Claim 1 the Applicant argued 1st: Claim 31 & 32 is not seen in the references.

The Examiner has considered the applicants argument but is moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Contact Information

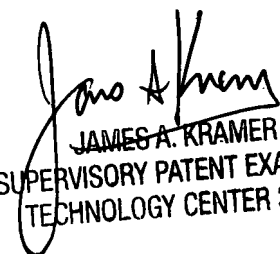
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kirsten S. Apple whose telephone number is 571.272.5588. The examiner can normally be reached on Monday - Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-272-6126.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ksa

 5/24/07
JAMES A. KRAMER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600